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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,593	05/19/1999	DALE C. TONOGAI	M-7547-US	5429
34036	7590	04/21/2004		
SILICON VALLEY PATENT GROUP LLP 2350 MISSION COLLEGE BOULEVARD SUITE 360 SANTA CLARA, CA 95054			EXAMINER VANDERPUYE, KENNETH N	
			ART UNIT 2661	PAPER NUMBER 14

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/314,593

**Applicant(s)**

TONOGAI, DALE C.

**Examiner**

Kenneth N Vanderpuye

**Art Unit**

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,10-14,16-35,40-57 and 63-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6,10-14,16-33,41-44,47-53,57 and 69-73 is/are allowed.
- 6) ☒ Claim(s) 34,35,40,45,46,54-57 and 63-65 is/are rejected.
- 7) ☒ Claim(s) 66-68 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 39 is objected to because of the following informalities:

Applicant has canceled claim 39, however claim 39 has again been presented. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 34-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With regards to claim 34 applicant claims forming a packet containing information of a first quality... and forming a second packet containing information of a second quality. This limitation is not supported by the specification. On page 8 lines 4-10 of the specification,

applicant refers to service quality not information quality as stated in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40, 45-46, 54-56, 63-65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al(6,003,089)

With regards to claim 40, 46, are Shaffer teaches a method for transmitting streaming information in a packetized format, the method comprising:

Forming a first packet(Fig 3, original packet) containing a first number of snippets(bytes of data), in response to an increase in processing requirements(increase in requirements is the direct result of congestion, Fig. 2@72), forming a second packet containing snippets of a second number that is larger than the first number(Fig. 4, larger Ethernet packet contains more bytes), wherein the increase in processing requirements occurs in a device that generates the packets(the Ethernet switch detects

congestion and changes the processing requirements. Ethernet switch generates and handles packets, col. 4 lines 23-40). Shaffer does not refer to the bytes of payload as snippets. Since snippets represent blocks of data which also represent bytes of data, the hence snippets refers to bytes of data. It would have been obvious to one of ordinary skill in the art to define payload in terms of blocks of data as opposed to bytes of data, since they ultimately mean the same thing.

Claim 45 is rejected for the same reasons as claim 40 because the the Ethernet switch acts as a source of packets and the increase in processing requirements(congestion that leads to forming larger packets) occurs in the network(congestion occurs in the network) that is connected to the source and carries the packets.

Claims 54-55 are rejected for the same reasons as claim 40. The use of Ethernet packets to transmit digitized voice or audio is well known in the art. It would have been obvious to one of ordinary skill in the art to combine this well Known art with Shaffer, the motivation being to enable video or audio transmission.

Claim 56 is rejected for the same reasons as claim 40, also the limitation "wherein use of the number of snippets is selection, is taught by Shaffer(col. 3 lines 35-36)

Claim 63 is rejected because Shaffer teaches a device including: a memory (Fig. 1@40), an information controller coupled to the memory for storing information snippets in the memory(Fig. 1@10), a packet controller coupled to the memory for transmitting a plurality of packets stored in the memory(Fig. 1@14); and means for forming a first packet containing a first number of snippets(original packet) and for forming a second packet containing a second number of snippets of a second number greater than the first number(Fig. 4, larger Ethernet packet contains more bytes) in response to an increase in processing requirements(increase length of packets due to congestion). Shaffer does not refer to the bytes of payload as snippets. Since snippets represent blocks of data which also represent bytes of data, the hence snippets refers to bytes of data. It would have been obvious to one of ordinary skill in the art to define payload in terms of blocks of data as opposed to bytes of data, since they ultimately mean the same thing.

Claim 64 is rejected because the increase in processing requirements occur in the Ethernet switch.(Fig. 1)

Claim 65 is rejected because congestion occurs in the network which is detected by the Ethernet switch, leading to an increase in processing requirements.

***Allowable Subject Matter***

Claims 1-6, 10-14, 16-33, 41-44, 47-53, 57, 69-73 are allowed.

Claims 66-68 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth N Vanderpuye whose telephone number is 703-308-7828. The examiner can normally be reached on M-F(7:30-5:00) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms can be reached on 703-305-4703. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KNV  
4-19-04



KENNETH VANDERPUYE  
PRIMARY EXAMINER